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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

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In the Matter of )  
 )  
Amendment of Section 73.202 )  
FM Table of Assignments )  
(Colonial Heights, Tennessee) )

MM Docket No. 93-28  
RM-8172  
RM-8299

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To: Chief, Mass Media Bureau

SUPPLEMENT TO  
PETITION FOR RECONSIDERATION

Murray Communications ("Murray"), permittee (File No. BPH-900220MM) of WLJQ(FM), Colonial Heights, Tennessee, by counsel herewith submits the attached Summary as a Supplement to its Petition for Reconsideration, previously submitted in the above proceeding on December 20, 1994, and requests that it be accepted and made a part of the prior filing from which it was inadvertently omitted.

Respectfully Submitted,

MURRAY COMMUNICATIONS

By:   
Timothy K. Brady  
Its Attorney

P.O. Box 986  
Brentwood, TN 37027-0986  
(615) 371-9367  
December 21, 1994

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## SUMMARY

The Commission's contention that Murray "does not propose to swap its current operating channel with another authorized facility" is factually erroneous and entirely illogical.

The term "incompatible channel swap" appears nowhere in the Commission's Report and Order in Modification of FM Broadcast Licenses to Higher Class Co-Channels or Adjacent Channels, 60 RR2d 114 (1986). Instead, in adopting Section 1.420(g)(3) the Commission indicated that it would implement nonadjacent channel substitutions, which involved "mutually exclusive" relationships which were "similar to" the mutually exclusive co-channel and adjacent channel substitutions addressed under the rule. *Id.* Focusing on the "rationale" for the new rule, i.e., that the channel proposed to be utilized to implement the upgrade "is not available in the Ashbacker sense for application by other interested parties," the Commission indicated that the the "concern in all such cases would be the mutually exclusive relationship which is created." 60 RR2d at 120, para. 24.

Since adopting Section 1.420(g)(3) in 1986 the Commission has in all prior cases focused solely upon the existence of a "mutually exclusive relationship," where nonadjacent channel substitutions are proposed. Where a mutually exclusive relationship has been found to exist among the channels proposed for substitution, the Commission has approved the proposed substitutions, where such a relationship has been found lacking, the proposals have been rejected.

In the Report and Order the Commission's Staff applied the requirements for implementation of nonadjacent upgrades pursuant to Section 1.420(g)(3) in an unintended and unduly restrictive manner. Nothing in Modification of FM Broadcast Licenses to Higher Class Co-Channels or Adjacent Channels, 60 RR2d 114 (1986) indicated any intention to limit consideration only to those proposed channel substitutions which fit precisely the facts of the example discussed at paragraph 24. Nor did the Commission limit the proposals to be considered to one for one channel exchanges between two and only two stations. Furthermore, the Commission has previously approved mutually exclusive channel substitutions involving more than two stations.

Based on established precedent, it was unnecessary for the Commission even to reach the issue of whether the proposal was entitled to be considered under 1.420(g)(3), inasmuch as no competing expressions of interests were timely filed.

CERTIFICATE OF SERVICE

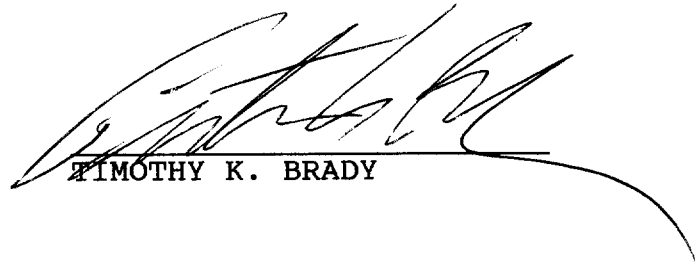
I, Timothy K. Brady, hereby certify that I have this 29<sup>th</sup> day of December, 1994, served a copy of the foregoing Supplement to Petition for Reconsideration by First Class US Mail, postage prepaid, upon the following:

Michael Norton, Esq.  
Wyatt, Tarrant, Et. Al.  
1500 Nashville City Center  
Nashville, TN 37219  
(Counsel for Franklin Communications, Inc.)

WFSM, Inc.  
P.O. Box 1409  
Lafollette, TN 37766

Tim Lavender  
WHAY(FM)  
P.O. Box 69  
Whitley City, KY 42653

Henry Beam, President  
Betap Broadcasting, Inc.  
P.O. Box 5588  
Princeton, WV 24740



TIMOTHY K. BRADY